

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 257 Terroristic Threats

SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee; Smith and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 436

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|-----------|--|
| 1) Criminal Justice Subcommittee | 13 Y, 0 N, As CS | Keegan | White |
| 2) Justice Appropriations Subcommittee | 10 Y, 0 N | McAuliffe | Lloyd |
| 3) Judiciary Committee | 17 Y, 0 N, As CS | Keegan | Havlicak |

SUMMARY ANALYSIS

Florida law currently imposes criminal penalties for making specific types of threats, as well as false reports regarding explosives or other destructive devices. However, such a threat or report must fall into narrow categories to be criminal. There are a number of states throughout the nation that criminalize threats of violence when made with the intent to cause some type of harm, such as an evacuation or other serious public inconvenience. Florida currently does not have such a prohibition in place.

The bill makes it a third degree felony for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for causing:

- Terror; or
- The evacuation of a building, place of assembly, or facility of public transportation.

A violation is punishable as a second degree felony, if the violation:

- Causes the occupants of a building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations;
- Involves a threat against instructional personnel, a law enforcement officer, state attorney, public defender, statewide prosecutor, Attorney General, criminal conflict and civil regional counsel, firefighter, judge, or other elected official; or
- Involves a threat against a family member of instructional personnel, a law enforcement officer, state attorney, public defender, statewide prosecutor, Attorney General, criminal conflict and civil regional counsel, firefighter, judge, or other elected official.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department (i.e., an increase of ten or fewer prison beds). See Fiscal Impact Statement.

This bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently imposes criminal penalties for making specific types of threats, as well as false reports regarding explosives or other destructive devices. Such a threat or report must fall into one of several narrow categories to constitute a crime, with varying penalties depending on the type of threat or report that is made.

There are a number of states throughout the nation that criminalize threats of violence against others. Many of these states criminalize threats of violence when made with the intent to cause some type of harm, such as terror, an evacuation, or other serious public inconvenience.¹ Florida currently does not have such a prohibition in place.

Written Threat to Kill

It is currently a second degree felony² to write or compose and send, or procure the sending, of any written or electronic communication containing a threat to kill or do bodily injury to the person to whom the letter or communication is sent, or a threat to kill or do bodily injury to the family of the person to whom such letter or communication is sent.³

This prohibition does not apply to unwritten threats, such as a threat made over the telephone, nor does it apply to written threats against a third party who is not the person, or the family of the person, to whom the letter was sent.

Threat Regarding a Destructive Device

It is currently a second degree felony for any person to threaten to throw, project, place, or discharge any destructive device⁴ with intent to do bodily harm to any person or with intent to do damage to any property of any person.⁵ A conviction under this statute does not require proof that the accused actually intended to follow through with the threat, only that the threat conveyed the intent to do bodily harm to another.⁶

This prohibition applies to both written and unwritten threats, but it does not apply to threats to do violence to a person without the use of a destructive device.

¹ See, e.g., ALA. CODE §13A-10-15; GA. CODE ANN. §16-11-37; N.J. STAT. ANN. §2C:12-3; WYO. STAT. ANN. §6-2-505;

² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

³ s. 836.10, F.S.

⁴ Section 790.001(4), F.S., defines “destructive device” as any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. “Destructive device” does not include: (1) A device which is not designed, redesigned, used, or intended for use as a weapon; (2) Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; (3) Any shotgun other than a short-barreled shotgun; or (4) Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

⁵ s. 790.162, F.S.

⁶ *Reid v. State*, 405 So. 2d 500 (Fla. 2d DCA 1981).

Threat against a Public Servant

It is unlawful to harm or threaten to harm any public servant, his or her immediate family, or any other person with whose welfare the public servant is interested, with the intent to:

- Influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of, a public duty.
- Cause or induce the public servant to use or exert any influence on another public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant in violation of a public duty, or in performance of a public duty.⁷

It is a second degree felony to unlawfully harm any public servant or another other person with whose welfare the public servant is interested.⁸ It is a third degree felony⁹ to threaten unlawful harm to any public servant or to any other person with whose welfare the public servant is interested.¹⁰

This prohibition criminalizes both written and unwritten threats; however, it only applies to a threat that is made with the intent to influence or coerce a public servant. This prohibition is also limited to criminalizing threats made against public servants, their families, and other people with whose welfare the public servant is interested, and does not criminalize threats against other members of the public.

False Reports

It is a second degree felony for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the place or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction,¹¹ or concerning any act of arson or other violence to property owned by the state or any political subdivision.¹² Any person who is convicted of a commission of this offense that resulted in the mobilization or action of any law enforcement officer or any state or local agency, may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.¹³

Effect of the Bill

The bill makes it a third degree felony for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for causing:

- Terror;¹⁴ or
- The evacuation of a building, place of assembly, or facility of public transportation.

A violation is punishable as a second degree felony, if the violation:

- Causes the occupants of a building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations;
- Involves a threat against instructional personnel, a law enforcement officer, state attorney, public defender, statewide prosecutor, Attorney General, criminal conflict and civil regional counsel, firefighter, judge, or elected official; or

⁷ s. 838.021, F.S.

⁸ s. 838.021(3)(a), F.S.

⁹ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

¹⁰ s. 838.021(3)(b), F.S.

¹¹ “Weapon of mass destruction” is defined as (1) any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; (2) any device or object involving a biological agent; (3) any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or (4) any biological agent, toxin, vector, or delivery system. s. 790.166(a), F.S.

¹² s. 790.164, F.S.

¹³ s. 790.164(4)(d), F.S.

¹⁴ “Terror” is defined as “a very strong feeling of fear.” MERRIAM-WEBSTER, *Terror*, <http://www.merriam-webster.com/dictionary/terror> (last visited Nov. 9, 2015). In Alabama, Georgia, and Kansas, which have statutes criminalizing a threat to commit violence with the purpose of terrorizing another, courts have rejected arguments that such statutes are unconstitutionally vague and overbroad. *Lansdell v. State*, 25 So.3d 1169 (Ala. Crim. App. 2007); *Lanthrip v. State*, 218 S.E.2d 771 (Ga. 1975); and *State v. Gunzelman*, 210 Kan. 481, 502 P.2d 705 (Kan. 1972).

- Involves a threat against a family member of instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge or elected official.

A person who is convicted of a violation shall, in addition to any other restitution or penalty provided by law, pay restitution for all costs and damages caused by an evacuation resulting from the criminal conduct.

The bill provides the following definitions:

- “Family member of a person” means:
 - An individual related to the person by blood or marriage;
 - An individual living in the person's household or having the same legal residence as the person;
 - An individual who is engaged to be married to the person, or who holds himself or herself out as, or is generally known as, an individual whom the person intends to marry; or
 - An individual to whom the person stands in loco parentis.¹⁵
- “Instructional personnel” is defined in accordance with s. 1012.01, F.S.¹⁶
- “Law enforcement officer” means a current or former:
 - Law enforcement officer, correctional officer, correctional probation officer, part-time law enforcement officer, part-time correctional officer, part-time correctional probation officer, auxiliary law enforcement officer, auxiliary correctional officer, or auxiliary correctional probation officer, as those terms are respectively defined in s. 943.10, or county probation officer;
 - Employee or agent of the Department of Corrections who supervises or provides services to inmates;
 - Officer of the Florida Commission on Offender Review;
 - Federal law enforcement officer as defined in s. 901.1505; or
 - Law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

B. SECTION DIRECTORY:

Section 1. Creates s. 836.12, F.S., relating to terroristic threats.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department (i.e., an increase of ten or fewer beds).

¹⁵ “In loco parentis” means “in the place of a parent.” MERRIAM-WEBSTER, *In Loco Parentis*, <http://www.merriam-webster.com/dictionary/in%20loco%20parentis> (last visited Nov. 9, 2015).

¹⁶ “Instructional personnel” means any K-12 staff member whose function includes the provision of direct instructional services to students. The term also includes K-12 personnel whose functions provide direct support in the learning process of students. s. 1012.01(2), F.S.

According to the CJIC, there are currently several statutes with similar penalties. For example, s. 836.10, F.S. contains a second degree felony for written threats to kill or do bodily harm. In Fiscal Year 2014-2015, 51 offenders were sentenced for this offense and 13 received a prison sentence (mean sentence length was 50.4 months). Also, s. 790.162, F.S., makes it a second degree felony for threatening to throw, project, place, or discharge any destructive device. In Fiscal Year 2014-2015, 14 offenders were sentenced for this offense and one received a prison sentence (mean sentence length was 14.0 months).

Additionally, s. 790.163, F.S., contains a second degree felony for a false report about planting a bomb, explosive, or weapon of mass destruction, and s. 790.164, F.S., contains a second degree felony for a false report against state-owned property. In Fiscal Year 2014-2015, 24 offenders were sentenced for a false report about planting an explosive and four received a prison sentence (mean sentence length was 27.0 months). One offender was sentenced, but did not receive a prison sentence, for a false report against state-owned property.

In Fiscal Year 2014-2015, the incarceration rate for an unranked, 3rd degree felony was 9.9 percent and for an unranked, second degree felony was 26.7 percent.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 17, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Added and clarified definitions;
- Revised the prohibition in the bill to apply to threats to commit a crime of violence with intent to cause, or reckless disregard for causing terror or the evacuation of a public building, place of assembly, or facility of public transportation; and
- Clarified the requirement for persons convicted under the bill to pay restitution.

On January 28, 2016, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment added the following persons to the list of protected persons in the bill:

- School administrator;
- School bus driver;
- Public defender;
- Statewide prosecutor;
- Attorney General; and
- Criminal conflict and civil regional counsel.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.